

vidity, enjoying upon the duties of legal tribunals to put down enemies, then referred to the case before the court, spoke against sympathy influencing the jury, and said that the reason of so much crime being in evidence in this Territory, was, that the people had been allowed for a time previously, to commit great crimes and go unpunished. This spirit had to be repressed and governed by the law.

Mr. DeWolf then read parts of the indictment and presented the evidence, and referred to the evidence the prisoner had given in counterfeiting checks to defend Government, and reminded the jury that the prisoner was the first to introduce the scheme, and first to use the terms of "counterfeit evidence," the prisoner being concerned in the crime would have to take all responsibility, this closed the argument for the prosecution. [The prisoner desired to finish the plea of Mr. Thompson, who relied on account of sickness, the court ruled it was now too late, as government had closed the case.]

The Judge then addressed the jury as follows: "Gentlemen of the Jury—

You are the judges of what the testimony of the witnesses is to prove, and by the evidence alone you are to find a verdict in this case, and if many crimes have been committed in this community, it is no reason why the prisoner shall be convicted or acquitted. As cool dispassionate citizens, it is your duty to consider the evidence alone under the oath you have taken. David McKenzie alone is on trial before you, and it is as to him alone you should find.

If you are satisfied from the evidence that he is guilty as charged, the form of your verdict will be "we the jury find the defendant guilty as charged in the indictment." If you do not so believe from the evidence the form of your verdict should be "we the jury find the defendant not guilty," and in either event the verdict must be signed by your foreman.

If you believe from the evidence, that the prisoner, David McKenzie, Myron Brewer and John M. Wallace entered into a conspiracy to defraud the United States, by forging the check of Col. G. H. Croxman, Deputy Quarter-master General on the Assistant Treasurer of the United States at St. Louis, and in furtherance of the common design, Mr. McKenzie engraved the plate, and struck off the check in controversy, and that Brewer and Wallace took it to Cedar county, filled it up there, thus completing the forgery, and passed it off there as genuine, then you should find the defendant guilty as charged in the indictment. If you do not so believe, then you should find him not guilty.

The Judge then added the following instructions to the traverse jury, on the part of the prosecution—

If the jury believe from the evidence that there was an agreement or conspiracy entered into between the prisoner, and any other person or persons to forge checks in violation of those drawn on the Assistant Treasurer of the United States at St. Louis, by G. H. Croxman, Deputy Quarter-master General, and they did so forge the check in evidence in this case, the jury will find the prisoner guilty under the indictment, charging him with forgery in the county of Cedar if they believe the forged draft was put in circulation there by any one of the conspirators, each person engaged in the conspiracy, who did any act in furtherance of the design to defraud, being chargeable with the act of each and every co-conspirator.

If the jury believe from the evidence, that the defendant made the plate from which the forged check was struck, and assisted in striking the blanks with it, though he may not have aided in filling up said check, in putting it in circulation, he is nevertheless guilty under the statute.

On the part of the defense, we ask the court to instruct the jury that the act of engraving is not criminal of itself, unless the intention to defraud is upon the part of defendant is evident.

INSTRUCTIONS OF THE COURT.

U. S. vs. David McKenzie.

1. If the jury believe from the evidence that David McKenzie, the prisoner at the bar, combined and conspired with other persons to forge checks, of the character of the one described in the various counts of this indictment and in pursuance thereof, made one part of the check in question, and handed it over to others to be by them filled up and put in circulation, and that he afterwards filled up by any one of them at Cedar county and then altered; all the persons doing any act in furtherance of the common design, no matter where he lived or performed his share of the forgery, he is guilty of forgery in Cedar county, and can be convicted only in this district and nowhere else.

2. When several persons conspire to commit any crime to be perpetrated by several persons, the acts of any one of such persons or conspirators are considered the acts of all of them, and are evidence alike against all, and if the jury believe in this case, that such conspiracy existed in this case between the prisoner, Brewer and Wallace, and completed this forgery in Cedar county, McKenzie is as guilty as Brewer of the forgery in Cedar county, though he may never have been in the county of Cedar. Each party is deemed to consent to all that is done in furtherance of the common design.

3. It does not matter whether McKenzie made the plate and struck off the check as a mechanic merely, or for a portion of the profit. If he knew what was to be made of it, he is equally guilty.

4. It does not matter whether the Wm. Leat who bought the check knew it was counterfeit when he bought it of Brewer. The uttering a

counterfeit consists in representing it to be genuine and passing it off as such.

5. You are to presume that each party has offered you all the evidence in his power. The prisoner had the right to take out subpoenas for his witnesses at any time since his arrest in July last, and unless he did so, you are to presume he had no witness by whom to introduce counterfeited proof.

The jury then retired.

Court took recess to await the verdict.

Court resumed after a lapse of one hour.

Jury came into Court—roll called—all present.

The Judge said: "Gentlemen of the Jury, have you jointly and unanimously agreed on your verdict? In the prisoner at the bar guilty or not of the charge against him?"

Foreman. Guilty, as charged in the indictment.

Clerk then read the finding.

The Judge said: We shall defer judgment till Monday, on account of the illness of Mr. Thompson, the prisoner's attorney.

The Judge then read a presentment from the Grand Jury, showing that jurors, witnesses and other officers of Court not receiving proper compensation for duties, and the people charging too high for boarding and lodging, it was very inconvenient and almost impossible to obtain accommodations—that the Territorial Treasury had no funds, etc.

The Judge said, that the law did not give him power to rectify their grievances, nor did he know how to apply a remedy, but he would consider the presentment and give them an answer on Tuesday next.

The Judge then discharged the surplus jurors, who had not been empaneled.

The case of the PEOPLE vs. BARTHOLOMEW and others, was brought up.

Mr. DeWolf moved that a nolle prosequi be entered and judgment stayed against said Bartholomew.

The Judge then discharged Bartholomew from custody, ordering him to be retained as witness, in any case that might arise.

Court adjourned till Monday, August 29th, 1859, at 10 o'clock A. M.

MONDAY, August 29, 10 a. m.

Court opened.

Records of Saturday read and signed by the Judge.

The Court called for motions.

Mr. Thompson moved that in the case of the PEOPLE of the United States vs. McKenzie, the verdict be set aside and a new trial ordered. The ground of the motion being that "during the trial the jury had scattered, and one juror had singly been in custody of an answers officer. Also the prosecuting Attorney had, in an unlawful manner, communicated with the jury."

The Court ordered all law made of the facts set forth.

Mr. Thompson moved that in the case of C. A. Perry & Co. vs. McNeil and Gemmel a writ of habeas corpus be issued to compel the heirs of McNeil (deceased) to appear in court.

Mr. DeWolf moved a discharge of recognizance of all witnesses in the case of the PEOPLE vs. McKenzie, which discharges were entered by order of Court.

Edward Oakley and Mr. Findlay were made citizens of the United States.

The Judge announced his intention of appointing Commissioners to act in various parts of his District, to take acknowledgment of Bail, Recognizances, &c. The Judge then read common law touching "the appointment of special sessions of Court," showing that trials by jury were prohibited except in criminal cases.

These extracts were read in answer to enquiries from Mr. Thompson, who had charge of several civil cases that would call for juries; there being a probability of an adjournment of Court and a special session thereof.

The Judge deferred further explanation till afternoon.

Court took recess till 3 o'clock p. m.

Court resumed.

Thomas Midgley, son, and Jonathan Midgley were admitted citizens of the United States.

John D. Chase was appointed United States Commissioner for San Pete county.

Mr. Thompson renewed motion "that the verdict be set aside in the case of the PEOPLE of the United States vs. McKenzie."

Mr. Thompson filed affidavits of Mr. W. Wallace, on "separation of jurors" during the trial, etc. of Mr. J. B. Gier and Martha Kirk on "jury being in charge of an answers officer," and "irregular communication of Prosecuting Attorney with the jury," etc.

Motion argued and overruled by Court.

The prisoner then delivered a very affecting address to the Court and the jury, saying that he had pleaded "not guilty" to the charge in the indictment, considering that to have been the privilege allowed him by the law, for "every man was considered innocent until proven guilty;" but now he wished to acknowledge the part he had taken in the crime of which he stood convicted. He had been the victim of foul and repeated treachery; yet did not wish to screen himself from punishment on that account, for he had gone into the scheme with his eyes open. He then referred to the threats and entreaties thrown out by his accomplice, Brewer, to induce him (McKenzie) to go into the scheme of counterfeiting. Brewer had turned State's evidence, but had been the principal instigator of and actor in the crime. He would leave the judgment of Brewer's character to those who had closely watched his recent course.

After some remarks from his honor to the prisoner, sentence was pronounced as follows:

"It is therefore considered, that, for the offense for which you have been found guilty, you be imprisoned at hard labor in the Penitentiary of this Territory, for the term of two years, and make your fine to the United States, in the sum of \$50.00, and that you pay the costs of this prosecution, taxed at — dollars and — cents; and I order that the Marshal for the Territory carry this judgment into execution, with as little delay as practicable, by delivering, into the custody of the keeper of the Penitentiary, the said David McKenzie, there to be by him kept and

detained for the period aforesaid, and that the plaintiff have execution for the fine and costs assessed."

R. Ballantyne was made a citizen of the United States.

Mr. Thompson said he did not think there would be a jury required in the case of which he had charge, and for the trial of which he would recommend a special session of Court, or have them continued over till the next term.

The Judge then addressed the jury, briefly alluding to the presentment made by the Grand Jury, which complained of inconveniences, arising from the scarcity of funds in the hands of the Marshal, and the high charges made for boarding jurors, witnesses, &c.; said that, though these evils might exist, it was their duty to maintain the dignity of the law, by investigating the many charges of crime that had been perpetrated in the district. For, according to the best information received, there had been no less than one hundred and sixty murders committed within the limits of said District, and if ever there was a time that the law needed to be vindicated, it was now in Utah; yet it was not possible to hold court without a court house, or without any funds in the hands of the Government officer or Territorial treasury. And then, the fees allowed in Territorial business were far too small to meet common contingencies of witnesses and jurors, and he did not feel to thus punish the latter by retaining them through the crimes of others.

The grand jury were then brought into court, who, after receiving similar instructions to those already given by the court to the traverse jury, were also discharged.

The court ordered that witnesses already under recognizance should renew them to appear next term of court.

The following witnesses accordingly came forward to renew their recognizances—Daniel Stanton, B. F. Bird, James O. Bannion, Wm. Leat, Charles H. Smith, Elijah and Mrs. Webb, Wm. Oliver, Wm. Cairns and Robert Davis.

Attachments were issued for all cases where recognizances were entered into, to appear at the next term of court.

Court adjourned till to-morrow, 5 a. m.

TUESDAY, Aug. 30, 8 a. m.

Court met pursuant to adjournment.

Mr. J. Daley, Thomas Spriggs, Wm. D. Huntington and Mr. Davis Clark entered into recognizances for their appearance as witnesses at the next term of court.

The recognizance of Mr. L. Wood was discharged.

The Judge announced that, as the grand jury had been discharged he would now sit as Commissioner Magistrate, to examine witnesses.

Mr. D. Lovrino, sworn and examined, gave the following evidence on the Parrish murder case—Lived in Springville in the year '57—Was out late one night, thought about 11 o'clock, in one of the streets of Springville, when, on coming to a wall fence, heard the sound of voices behind it. Secreted himself under the outside of said fence, to listen to the conversation when he recognized the voice of Wilber J. Earl, in conversation with some person unknown to witness—heard W. J. Earl inform the other, that William Bird killed the elder Parrish, and that Richard Bird assisted him. Earl also said, that if Richard Bird had not assisted, he believed Parrish would have killed William Bird in the struggle, for the elder Parrish struck W. Bird several blows with a pistol, before he (Parrish) was finally overpowered. Witness did not hear anything more, but retired home a few days afterwards, met Earl and told him what he had overheard on the night in question. A short time after this, about 11 o'clock one night, W. J. Earl, Sanford Fuller, a Mr. Johnson, Mr. McBride and Eli Curtis came to his house, Earl requesting him (witness) to follow them, which he did, to the distance of about three quarters of a mile south of Springville. Earl then enquired of him if he was a Mormon, if he believed in obeying authorities, etc. Sanford Fuller then placed the edge of a bowie knife at his throat, and W. J. Earl a pistol to his breast, commanding him to swear that he would never reveal, to friend or foe, what he had overheard W. J. Earl say about the murder of the Parrishes, while secreted behind the fence aforesaid, on a certain night, or they would "kill him on the spot." Witness complied, and took an oath accordingly; when, with the party concerned, he returned to Springville and went home. This was all he knew about the transaction, but he added he still felt to fear that his life was in danger from the parties concerned in his statements, or that Earl and others would fulfill their threats if they had a good chance.

Philinda Cutler, sworn—Testified that she lived in Springville in '57, and that, on the 1st day of March, year aforesaid, she was at the house of Moses Daley, sen., Springville, there being present Orion Hyde, President of the Twelve Apostles in the Mormon Church, also Moses Daley, jun., Moses Daley, sen., a Mr. Packard, Semanda Daley, Almira Daley, Margaret Daley and Ann Elizabeth Vickers. During the conversation on said evening Mr. Orion Hyde said: "If the Parrishes attempt to go, without paying Bullock what they owe him, they must be stopped." That Mr. Packard inquired: "Do you mean that we shall murder them?" That Mr. Hyde answered: "If you do not, it will come upon your own heads." That Almira Daley, sen., excused himself, on account of being old, saying there were younger men that could do the business better. That the Parrishes were killed during the same month.

Mr. J. W. Webb, sworn—Testified that he lived at Springville at the time of the Parrish murder, '57. That on the morning after said murder of two Parrishes and Potter, a Mr. Stanton came to him and engaged him to make a coffin for Potter. Went down to the school house, where the bodies lay, and examined them. [Witness here described the wounds.] When the coffin was made, he (witness) took

it down to the school house, and with the assistance of a Mr. Daley put the corpse of Potter into it, another man having made coffin for the two Parrishes. Had heard Eli Curtis say that the Parrishes and Potter were killed to move them." A short time after this, went to a meeting of the City Council. Earl and A. F. McDonald were there. Thought McDonald was then, or had been, Mayor of Springville. Witness went to this Council to request pay for making Potter's coffin on doing which, W. J. Earl checked him, and took him outside the Council House, when Earl remarked: "You should not have said anything about the coffin in presence of McDonald, it makes him feel so bad." This was about all that passed at that time. Had heard some one say, that the elder Parrish would have killed William Bird, if Richard Bird had not assisted in the struggle. This was about all he knew of the Parrish murder. Witness further stated, that he lived at Payson at the time Mrs. Jones and son were murdered. On the morning of the murder had seen Bishop Hancock riding in to Payson, armed with revolvers. Witness had been aroused that morning by the discharge of fire arms in the vicinity of Mrs. Jones' dwelling. Had not seen the fatal transaction, but his (witness's) brother had seen some of it, and had told him (witness) that Bishop Hancock and his brother had committed the murder. This was all he knew about that matter.

Mr. B. Lovrino, Philinda Cutler and J. W. Webb entered into recognizances for their appearance at the next term of court.

Attachment issued for Orion Parrish, as a witness, and bail ordered, returnable next term.

Mr. Whitlock fined two dollars and costs of attachment, etc., for contempt in not attending when summoned as a juror.

The Judge here remarked: "A man must put aside private business to attend to public service. The dignity of the law must be sustained, for if some men claim to be beyond the law, the remainder must be slaves. I will do my duty. I will administer justice impartially to great and small, saint and sinner, and no man can be excused from the performance of a public duty through any voluntary obligations he may have imposed upon himself."

The Judge made these remarks on the ground of Mr. Whitlock having excused his non-attendance, as juror, on account of certain secret obligations he was under to the Mormon Church; the violation of which would forfeit him his life, etc.

On suggestion, the Judge ruled that, as Mr. E. D. Webb had intermarried with Mrs. Parrish, he be allowed to appear in cause.

Court adjourned till Friday, Sep. 2nd, at 8 a. m.

THE MOUNTAINEER.

GREAT SALT LAKE CITY.

SATURDAY, SEPTEMBER 10, 1859.

We do not believe in apologies; but feel that we owe our readers one this week for the extraordinary length of our Court reports. Our reporter has been most praise-worthy particular in sending us full minutes. We profess to be lawyers, and these matters have interest to us that possibly many of our readers may not appreciate. If we err on the start of our race, it is through a desire to give a full budget, and let the people have a chance to judge for themselves, of passing events, causes and effects. Full well are we assured that correct records of the courts of Utah, and honest diaries of federal officials, would be the most effectual vindication of the character of our citizens.

The records of the court show how nearly correct we were in our prognostications in the McKenzie case. How safe it always is to tell the truth.

Right here we wish to make a humble suggestion to everybody. The day is gone by when lying scoundrels can palm off all their rascality upon the citizens of Utah. We wish every scoundrel, pretended Saint or actual sinner, Mormon or Gentile, to farther his own vagabondism, no matter what his position or how numerous his friends; and what honest man dreads the issue? To officials we purpose giving our attention, and anatomizing their official deportment strictly and truthfully. The systems of swindling, carried on in the United States, are becoming more and more numerous. We have some notion of taking a glance at their progress, and hinting once in a while to our fellow-kings of America of the impositions practised upon us by our public servants. Officials, while they are in office, are public property, and as such we shall deal with them. We said so on the outset, and shall stick to it. The need of praise shall not be denied, nor the scourge withheld, when merited.

In another column we have called attention, partially, to the condition of

society in Utah. Whiskey and the revolver seem lately to have usurped the positions of law and order in our midst. Why is this? It was not always so. Even our faint memories recall to us a time when an honest man could walk the streets of our city with equal safety at midnight as at noon-day. Is the law deficient? No! What then? The Legislature of Utah has made abundant provision for the maintenance of the law's supremacy. But our judges trample the laws under their feet. Our Territorial Marshal and our sheriffs are crowded out of court. They are passed on the street unheeded and without acknowledgment. And yet they are the very men whose character and influence in the Territory would make them the most efficient executive officers.

We are opposed to rowdism. We want it stopped. We wish again to see the time when a man can walk the streets of our city, without the swagger and arms of a bandit. We wish again to see the time when our wives, and sisters, and daughters can take an afternoon or twilight walk, without being insulted by the foolish coxcombs who feed upon our own hard earnings. These things we wish to see; and, our good friends, WE SHALL SEE THEM!

A word, before closing, about the Court at Neph. Without lengthy comments we shall state two or three facts. Of the Grand Jury who sat at Neph and indicted McKenzie, fourteen were from Camp Floyd, and several of them said to be gamblers. Of the Traverse Jury who tried McKenzie, ten were residents of Camp Floyd and vicinity. It is but just, however, here to say, that some of the jurors from Camp behaved fairly and honorably in their deliberations.

Our most magnanimous and highly esteemed Chief Justice, you made a most serious under-estimate of the murders done in your district. A hundred and sixty! Why, that is scarcely a fraction. We ourselves helped to slay some thirty or forty Indians in that district. Was that murder? The Sevier bears the silent record of the massacre of poor Gammison and his party. And the bones of nearly two hundred men, women and children tell the sad story of the Mountain Meadows. Why not come out plainly, Judge, and tell what you think? Let us have no more under-ground insinuations. Talk your sentiments like a man. We want crime exposed and punished as much as you do, nay, far more so. We wish to see the murderers, white or red, of Mountain Meadows memory, arraigned, and by the same verdict that convicts them, see the mass of our citizens exonerated. And this can all be done. But not by a jury of gamblers and army attaches. Nor can arrests be made, in our opinion, by the assistance of troops, or under the hands of Marshal Dotson's migratory deputies. Let respectability and honor be reintroduced among all our officials and our purses in pledge, but the law will be vindicated, and the guilty brought to justice. Instead of a jury of camp followers, give us a jury of honest citizens. Instead of transient adventurers, whose characters are of foreign creation, give us our own executive officers in our courts, men who have some interest in the building up and preservation of social rights. In fact, deal with us as human beings and Americans.

THE NEW TERRITORY.—We publish elsewhere Nevada's Declaration of Independence. There was something so confoundedly ludicrous about the affair at first sight, that we had thought of giving it a passing laugh and resting there. Poor pious souls! how much they have been abused. Their vigilance committees have not been indicted and arraigned as banded murderers. The gibbets in their dismal groves remain unnoticed and unknown. Renegades of many lands, their vices have not drawn upon them even the contempt of the nation.

There is something to be regretted in their arrangements. They have not provided offices for much more than

half the citizens, red and white included. That should not be so. Each man of the three or four hundred who are the citizens of that majestic sovereign territory ought to have an office. Instead of forty they should have had about four hundred members in the Assembly, and then each would have been his own representative. But do not be afraid, sister Nevada. We shall not contest your right to a divorce. To be sure, we, or some of us, planted your corn-fields, the increase of which you are now reaping; but we are not jealous. You are welcome, welcome to it all. But we don't think you treated Major Dodge fairly, though. We are told you had soldiers come up and give their names at your polls. Is that so? If so, it is a shame. We do not think you have as many people as you pretend. But we will let that go. If you were "Mormons" over there, we would have you indicted for treason and hang or pardon every one of you. But then you are not. We shall calmly take your case into consideration; and in the mean time would suggest the propriety of your becoming an independent nation at once, and crowning your Crane. How would that do?

WHISKEY AND REVOLVERS.—We do not at this time purpose to trouble our readers with a long article on the use of whiskey and the revolver, yet we have our minds decidedly made up against the use of both. Our reason for placing them together is, that King Alcohol generally commands when the revolver is used, and without whose inspiration the revolver, in the hands of the mass of men and boys who carry one in our city, would be as harmless as grandmother's spectacles that lie on the table. We are opposed to men carrying arms in our city limits. There is no excuse for the practice to be kept up any longer, and we hope that our city authorities will inquire into the expediency of passing a law that will tap the purse of all offenders. If such a law be enforced, we will predict that ere many moons wax and wane we shall again see observed among us that good order which it was our privilege once to enjoy.

COAL.—In our last we spoke of a newly discovered coal bed on the Weber River; since which time we have had the pleasure to know that a load of coal from this identical bed, has been brought to the city by Mr. William H. Kimball, a fine specimen of which now lies on our table, open for the inspection of all who may see fit to call and examine for themselves. Mr. Kimball informs us that the coal mine is within forty miles of the city, and that coal can be delivered in the city at rates much less than are now paid for wood; or the coal can be furnished at the bed, at rates that will warrant persons in drawing their coal for fuel from the Weber, in preference to hauling wood from the canyon. These propositions are based on the fact that one ton of coal is worth four loads of maple wood. The quality of the coal taken from this bed has been tested by the most experienced blacksmiths of the city, and by them pronounced as above stated. For further particulars call on Spriggs and Kimball.

ARRIVAL.—Arrived in this city by the last Eastern mail, Lord Grosvenor, son of the Marquis of Westminster, en route for California, thence to China. His Lordship is in the enjoyment of excellent health, and seems much pleased with the mountain scenery; and from the free and unrestrained chat with the Mormon dignitaries, we opine he is satisfied that all "our own correspondent" reports are not strictly reliable. We wish his Lordship a pleasant and agreeable trip to the "Ophir" of America and to the "Celestials," and thence to father-land, where the reminiscences of his mountain trip and interviews will form, no doubt, agreeable topics of conversation.

MERCHANTS.—We take much pleasure in referring our friends to the advertisement of their old acquaintances.